



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,082	08/22/2001	Nicholas Alan Timothy Colford	045636-5050	7370

9629            7590            10/23/2002

MORGAN LEWIS & BOCKIUS LLP  
1111 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20004

[REDACTED]

HYLTON, ROBIN ANNETTE

[REDACTED]

[REDACTED]

3727

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/934,082	COLFORD ET AL.
Examiner	Art Unit	
Robin Hylton	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because it contains more than one paragraph and the objectionable phrase "the invention relates to". Correction is required. See MPEP § 608.01(b).
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.
3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "a closure member" in claim 2.
4. The disclosure is objected to because of the following informalities: the patent number listed on page 2 does not disclosure a closure for an incubator, at page 6, line12, "their" does not agree with "user", and it is unclear how the outer surface 32 of the first ring 30 is fixed to the container as set forth at page 8, lines 1-3.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
6. Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. The term "elastically" implies the closure means is stretched or expanded. However, there is no support for elastically deformation during the

Art Unit: 3727

opening phase of the closure. Instead, the specification indicates the closure is compressed during the opening phase. Regarding claim 2, there is no disclosure for a closure member surrounded by elastically deformable means. The specification sets forth a closure member (fabric) surrounding the elastically deformable means.

7. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

It is unclear how the closure means of claim 1 is elastically deformed during the open state since the closure means is not stretched or expanded during this process.

It is unclear what structure comprises a closure member surround by the elastically deformable means of claim 2.

As a result of using "closure means", claims 1 and 2 fail to meet the 3-prong analysis of a "means plus function" claim set forth in the "Supplemental Examination Guidelines" effective June 21, 2000 and published in the Official Gazette on July 25, 2000. If applicant desires to invoke 35 USC 112, 6<sup>th</sup> paragraph, applicant must either modify the claims to include the phrase "means for" or show that even though the phrase "means for" is not used, the claim limitations are written as a function to be performed and do not recite sufficient structure, material, or acts which would preclude application of 35 USC 112, 6<sup>th</sup> paragraph.

Claim 3 recites the limitation "the peripheral structure" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

It is unclear what structure is being referred to by the terms "its" and it". It is suggested the noun be used in the claims instead of these terms.

The term "suitable" in claim 14 is a relative term which renders the claim indefinite. The term "suitable" is not defined by the claim, the specification does not provide a standard for

Art Unit: 3727

ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

The phrase "said object" in claim 5 positively recites the object as part of the claimed invention. Thus, the claims are considered to be drawn to the combination of the container and the object.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

9. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hook et al. (US 3,328,041) and Laird et al. (US 3,930,413).

Upon insertion of an object into the opening of the closure device, the closure means elastically deform essentially in the plane of the closure device.

10. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Baggard et al (US 6,186,997).

Art Unit: 3727

Upon insertion of an object into the opening of the closure device, the closure means elastically deforms essentially in the plane of the closure device.

11. Claims 1 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Koehler (US 478,873).

Upon application of pressure, the closure means C elastically deforms essentially in the plane of the closure device.

12. Claims 1,13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Bower (US 4,416,308).

Upon insertion of an object into the opening 30 of the closure device, the closure means elastically deforms essentially in the plane of the closure device.

13. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Iverson (US 4,328,904).

Upon insertion of an object into the opening of the closure device, the closure means elastically deforms essentially in the plane of the closure device wherein the flap is stretched upon insertion of the object as seen in figure 9.

#### *Claim Rejections - 35 USC § 103*

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karesh (US 4,078,686) in view of Iverson.

Karesh teaches a container having two opposed cover members. There is no teaching of elastic deformation of the closure.

Art Unit: 3727

Iverson teaches a closure for a container wherein upon insertion of an object into the opening of the closure device, the closure means elastically deforms essentially in the plane of the closure device.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the closure of Iverson to cover the openings of the Karesh container. Doing so allows insertion and removal of objects with respect to the container without removal of the closure.

#### ***Conclusion***

16. In view of the rejection under 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs, the patentability of claims 2-11 cannot be determined at this time.

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various closure similar to the disclosed and claimed are cited for their disclosures.

18. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

19. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

Art Unit: 3727

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature \_\_\_\_\_

Date \_\_\_\_\_

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 8:30 a.m. to 1:30 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
October 19, 2002

  
Robin A. Hylton  
Patent Examiner  
GAU 3727